

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

ENERGY VAULT, INC.,

Plaintiff,

v.

UNITED STANDARD ELECTRIC, LLC,

Defendant.

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Civil Action No. 4:23-cv-00047

**DECLARATION OF AKSHAY LADWA IN SUPPORT OF PLAINTIFF ENERGY
VAULT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

1. My name is Akshay Ladwa and I make this declaration under 28 U.S.C. § 1746 in support of Plaintiff Energy Vault, Inc.'s ("Energy Vault's") Motion for Partial Summary Judgment.
2. I am employed by Energy Vault and serve as its Chief Engineering Officer, having assumed that position in 2022. In that role, I was involved in the transaction negotiations leading to Energy Vault's purchase of 40 transformers from United Standard Electric ("USE") as part of the Jupiter St. Gall Project in Fort Stockton, Texas.
3. I am a custodian of records for Energy Vault and have personal knowledge of and access to the business records of Energy Vault. I am familiar with the record-keeping systems and practices of Energy Vault, including how the company creates, maintains, and stores its records.
4. On August 26, 2022, USE made a proposal to sell Energy Vault various transformers ("USE's Proposal"), as a response to a Request for Quotation submitted by Energy Vault. USE's Proposal included two designs of transformers for use in the Jupiter St. Gall Project, with apparent power ratings of 3010 kVA and 1250 kVA.
5. Additionally, USE's Proposal quoted four additional designs of transformers for use in other projects that Energy Vault was working on, which were separate from the Jupiter St. Gall Project. The total price for all quoted transformers in USE's Proposal was \$6,653,764.00.
6. Energy Vault responded to USE's Proposal with a written purchase order. The document attached as Exhibit D to Plaintiff's motion, with Bates numbers ENERGYVAULT000334–ENERGYVAULT000339 ("Purchase Order"), is a true and accurate copy of a record that Energy Vault sent to USE, dated September 13, 2022. This Purchase Order was created at

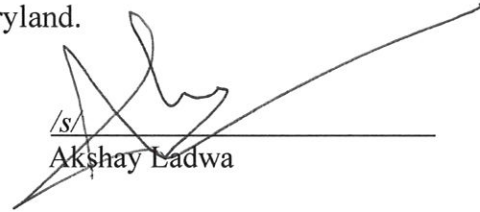


or near the time of the events described by an Energy Vault employee with knowledge of the transaction. The Purchase Order was maintained in the course of Energy Vault's regularly conducted business activities. It is Energy Vault's normal practice of creating and maintaining such records related to its transactions, and they are relied upon in the company's operations.

7. Because the Purchase Order included only the transformers that USE quoted for the Jupiter St. Gall Project, the total price came out to \$3,830,686.00.
8. In addition, the Purchase Order added a change to the transformer specifications, requesting natural ester fluid be used instead of mineral oil, thereby increasing the price of the order by \$478,116.00 across the 38 transformers rated at 3010 kVA, and by \$17,480.00 across the 2 transformers rated at 1250 kVA.
9. The Purchase Order included the terms and conditions that Energy Vault understood would govern the transaction. Paragraph 1 of the Purchase Order states that "Purchaser shall not be bound by terms additional to or different from those contained in this Purchase Order that may appear in Seller's quotations, acknowledgements, invoices, or in any other communication from Seller unless such terms are expressly agreed to in a writing signed by Purchaser."
10. Additionally, the Purchase Order states, "By acceptance of this Purchase Order and/or commencing performance hereunder, Seller agrees to comply fully with the terms and conditions hereof" and contained within the Purchase Order. *Id.*
11. The Purchase Order further specifies that it constitutes the Parties' entire understanding and that "supersedes any prior proposals, understandings, correspondence, and/or agreements."
12. In response to the Purchase Order, USE provided a Confirmation for Receipt of Order dated November 29, 2022, in which it stated that "United Standard Electric acknowledges receipt and confirms acceptance." The document produced by USE in this litigation with Bates number USE/EV000780 is a true and accurate copy of the Confirmation for Receipt of Order that Energy Vault received from USE.
13. USE ultimately delivered 38 transformers rated at 3010 kVA and 2 transformers rated at 1250 kVA, consistent with the itemization in the Purchase Order, albeit with the defects that led to this lawsuit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this October 3, 2024, in Bethesda, Maryland.


/s/
Akshay Ladwa